



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0232; FRL-11600-01-R4]

Air Plan Approval; GA; Miscellaneous Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD) via a letter dated October 20, 2022. The revision seeks to change Georgia's Rules for Air Quality Control in the SIP by removing the 1971 annual and 24-hour ambient air quality primary standard for sulfur dioxide (SO₂), which no longer applied in Georgia as of April 30, 2022. EPA is proposing to approve this SIP revision because the State has demonstrated that this change is consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. at EPA-R04-OAR-2023-0232 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA revised the primary SO₂ national ambient air quality standards (NAAQS or standards) to provide requisite protection of public health with an adequate margin of safety. *See* 75 FR 35520 (June 22, 2010). Specifically, EPA established a new 1-hour SO₂ standard at a level of 75 parts per billion (ppb), codified at 40 CFR 50.17.^{1,2} The 1-hour standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50 and 40 CFR 50.17(a) and (b).³ EPA set this new 1-hour short-term standard to replace the 1971 primary 24-hour standard of 0.14 parts per million (ppm) and the annual SO₂ standard set of 0.03 ppm.^{4,5} In the 2010 SO₂NAAQS final rulemaking, the Administrator concluded it was appropriate to revoke the 24-hour and annual primary standards,⁶ stating “a 1-hour standard at [a] level of 75 ppb would have

¹ *See* 75 FR 35520 and <https://www.gpo.gov/fdsys/pkg/FR-2010-06-22/pdf/2010-13947.pdf>.

² *See also* NAAQS Table at <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

³ On February 25, 2019, EPA finalized a second review of the SO₂ standard, retaining the existing primary 1-hour SO₂ NAAQS based on a review of the full body of currently available scientific evidence and exposure/risk information at the time. *See* 84 FR 9866 and <https://www.epa.gov/so2-pollution/primary-national-ambient-air-quality-standard-naaqs-sulfur-dioxide>.

⁴ EPA promulgated the 1971 primary and secondary NAAQS for SO₂ on April 30, 1971. *See* 36 FR 8186. The 1971 primary SO₂ standards of 365 µg/m³ (0.14 ppm), averaged over a period of 24 hours and not to be exceeded more than once per year, and 80 µg/m³ (0.03 ppm), as an annual arithmetic mean.

⁵ EPA did not revise the secondary 3-hour SO₂ NAAQS set at 0.5 ppm in the 2010 or 2019 NAAQS review.

⁶ EPA arrived at the same conclusion in the 2019 review of the SO₂ standard when the agency retained the 1-hour SO₂ standard of 75 ppb stating (respecting the rationale to revoke the previous SO₂ standard) “the evidence in this review [2019] is not substantively changed from that in the last review [2010].” *See* 84 FR 9866 (March 18, 2019).

the effect of maintaining 24-hour and annual SO₂ concentrations generally well below the levels of the current 24-hour and annual NAAQS.” *See* 75 FR at 35550. The final rule also states, based on health evidence and risk-based information, that the 1971 SO₂ standards ““are not adequate to protect public health, especially in relation to short-term exposures to SO₂ (5–10 minutes) by exercising asthmatics”” and that the new 1-hour standard would provide requisite protection of public health with an adequate margin of safety. *See* 75 FR at 35530, 35550.

Anti-Backsliding

When EPA revised the SO₂ NAAQS in 2010, replacing the annual and 24-hour standards with a short term 1-hour standard, EPA also addressed the section 172(e) anti-backsliding provision of the CAA and determined what provisions are appropriate to provide for transition to the new standard. Section 172(e) of the CAA specifies that if EPA relaxes a NAAQS, control obligations no less stringent than those that apply in nonattainment area SIPs may not be relaxed, and adopting those controls that have not yet been adopted as needed may not be avoided. Even though the 2010 1-hour standard is more protective than the previous SO₂ NAAQS, anti-backsliding provisions were necessary to insure that the health protection provided by the prior NAAQS continues to be achieved as well as maintained as states transition to the new standard.⁷ Specifically, EPA established at 40 CFR 50.4(e) when the 1971 SO₂ NAAQS would be revoked in areas, and when it was necessary to retain the older SO₂ standards, setting conditions needed for the eventual transition to the new 1-hour SO₂ NAAQS. Specifically, 40 CFR 50.4(e) provides that the 1971 SO₂ NAAQS will no longer apply to an area one year after the effective date of the designation of that area for the 2010 SO₂ NAAQS set forth in § 50.17; except that the 1971 SO₂ NAAQS remains in effect for areas that are nonattainment for that NAAQS as of the effective date of the 2010 SO₂ NAAQS, and areas not meeting the requirements of a SIP call

⁷ The owner or operator of a new or modified source will still be required to demonstrate compliance with the annual and 24-hour SO₂ increments, even when their counterpart NAAQS are revoked. The annual and 24-hour increments are established in the CAA and will need to remain in the prevention of significant deterioration regulations because EPA does not interpret the CAA to authorize EPA to remove them. *See* 75 FR at 35578.

with respect to requirements for the 1971 SO₂ NAAQS until that area submits, and EPA approves, an implementation plan providing for attainment of the 2010 SO₂ NAAQS.

SO₂ NAAQS Designations

After EPA promulgates a new or revised NAAQS, the agency is required to designate all areas of the country as either “nonattainment,” “attainment,” or “unclassifiable” for that NAAQS pursuant to section 107(d) of the CAA. The CAA requires EPA to complete the initial designations process within two years of promulgating a new or revised standard or June 2012 for the 1-hour SO₂ NAAQS. If the Administrator has insufficient information to make these designations by that deadline, the CAA provides EPA authority to extend the deadline for completing designations by up to one year. However, due to a lack of available and sufficient air quality data to inform designations, EPA was not prepared to issue designations for the 2010 primary SO₂ standard for the entire country within the CAA’s two-year deadline.⁸ On July 27, 2012, EPA extended the deadline for area designations for the 2010 primary SO₂ standard from June 2012 by one year to June 2013 due to having insufficient information to make initial area designations in two years. *See* 77 FR 46295 (August 3, 2012). With this extension, EPA completed initial designations on June 3, 2013, based on air quality monitoring data available at the time.

Subsequently, lawsuits were filed against EPA alleging that the Agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by June 3, 2013.⁹ EPA eventually entered into a consent decree on March 2, 2015, which required

⁸ This led EPA to convene a stakeholder process with state, tribes, industry, and non-governmental organizations in 2012 to refine the agency’s analytical approach to inform designations, with credible air quality data. With input from a diverse group of stakeholders, EPA developed a comprehensive implementation strategy for the future SO₂ designations actions that focused resources on identifying and addressing unhealthy levels of SO₂ in areas where people are most likely to be exposed to violations of the standard. This resulted in the promulgation of the Data Requirements Rule (DRR) on August 21, 2015 (80 FR 51052), to inform the remaining designations.

⁹ Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging the agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by the June 2, 2013, deadline. In an effort intended to resolve the litigation in one of those cases, EPA and the plaintiffs, Sierra Club, and the Natural Resources Defense Council, filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the court entered the consent decree and issued an enforceable order for EPA to complete the area designations by three specific deadlines according to the court-ordered schedule.

the agency to complete the remaining area designations in three specific deadlines or “rounds” of designations: July 2, 2016 (“Round 2”), December 31, 2017 (“Round 3”), and December 31, 2020 (“Round 4”). Round 1 designations were finalized as part of the 1-year extension in August 2013. Subsequently, EPA published *Federal Register* notices completing the remaining three rounds of SO₂ designations by the court-ordered deadlines. For Georgia, EPA designated areas in the state as attainment/unclassifiable in Rounds 2, 3, and 4 from 2016 through 2021, resulting in the entire state being designated as attainment/unclassifiable.¹⁰ Thus, on April 30, 2022, one year after the effective date of the Round 4 designations, the primary 24-hour and annual SO₂ NAAQS no longer applied in Georgia.

II. EPA’s Analysis of Georgia’s Submittal

Georgia’s October 22, 2022, submittal proposes to revise Rule 391-3-1-.02(4), “Ambient Air Standards”, at subparagraphs (b)1 and (b)2 of paragraph (b), “Sulfur Dioxide” to remove the 1971 annual and 24-hour ambient air quality primary SO₂ standards which, as discussed in section I, no longer applied in Georgia after April 30, 2022. The subsequent subparagraphs at Rule 391-3-1-.02(4)(b), are renumbered respectively.

As described above, EPA designated all counties in Georgia as attainment/unclassifiable through the three rounds of designations for the 2010 1-hour primary NAAQS, with the final Round 4 designations effective on April 30, 2021. Thus, these 1971 standards no longer applied anywhere in Georgia effective on April 30, 2022. Moreover, with no SO₂ nonattainment areas in Georgia for the 1971 or 2010 SO₂ NAAQS, the revocation of the 1971 SO₂ standards would not be deferred until nonattainment and maintenance planning requirements are met as described above. For these reasons, EPA is proposing to approve Georgia’s October 22, 2022, revision to Rule 391-3-1-.02(4), “Ambient Air Standards”, at paragraph (b), “Sulfur Dioxide.”

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that

¹⁰ See 40 CFR 81.311.

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as explained in sections I and II of this preamble, EPA is proposing to incorporate by reference Georgia Rule 391-3-1-.02(4), “Ambient Air Standards,” paragraph (b), “Sulfur Dioxide,” State effective September 19, 2022, to remove subparagraphs (b)1 and (b)2 and renumber the remaining provisions accordingly. EPA has made and will continue to make these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Georgia’s October 20, 2022, SIP submittal, which would remove the 1971 annual and 24-hour primary SO₂ NAAQS from the Georgia SIP at Rule 391-3-1-.02(4) and renumber the remaining provisions of Rule 391-3-1-.02(4)(b) accordingly for the reasons discussed herein.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of

environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Georgia EPD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 14, 2023.

Jeaneanne Gettle,

Acting Regional Administrator,

Region 4.

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